Supreme Court, U.S.
FILED
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No. 98-1490

IN THE

Supreme Court of the United States

OCTOBER TERM, 1998

WILLIAM J. HALL, BARBARA LISSER,
on behalf of themselves and all others similarly situated,
Petitioners,

v.

CORAM HEALTHCARE CORPORATION,
JAMES M. SWEENY, PATRICK FORTUNE, and SAM LENO,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

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RESPONDENTS' BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

A. Whether the Eleventh Circuit Court of Appeals correctly held that the merger clause contained in the Stipulation of Settlement precludes Petitioners as a matter of law from asserting the claims in their Complaint.

B. Whether the terms of the Stipulation of Settlement expressly prohibit the relief sought by Petitioners.

C. Whether Petitioners' claims are barred by the preclusive effects of a prior final judgment, which affirmed and incorporated the terms of the Stipulation of Settlement, in a related class action and of a final decision on the merits that denied Petitioners' attempt to modify the Stipulation of Settlement based on the same factual allegations as set forth in the Complaint in this case.

D. Whether Petitioners have failed to state a claim for securities fraud because they have not alleged justifiable reliance on any misrepresentations made to them by Respondents.

E. Whether Petitioners lack standing to state a claim for securities fraud because they are not purchasers or sellers of securities.

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RESPONDENTS' BRIEF IN OPPOSITION

STATEMENT OF THE CASE

This case has a long history. Petitioners' claims in the District Court purportedly relate to an earlier federal securities class action that, after protracted negotiations, resulted in a comprehensive settlement. The earlier litigation involved consolidated nationwide class actions that had been filed in 1992 and 1993 against T^2 Medical, Inc. ("T^2") and certain members of its senior management alleging violations of the federal securities laws. *In re T^2 Medical, Inc. Shareholder Litigation*, Master File No. 1:94-CV-744-RLV, United States District Court for the Northern District Court of Georgia.

After extensive negotiations, Petitioners entered into a Stipulation of Settlement (the "Settlement") dated January 27, 1995, with Coram Healthcare Corporation ("Coram"), T[2]'s successor corporation.[1] [R. 2-8, Ex. A.] Petitioners voluntarily agreed to release "all claims, . . . known or unknown, suspected or unsuspected, . . . whether or not concealed or hidden of every nature and description whatsoever," that were asserted or could have been asserted as of the effective date of the Settlement. [R. 2-8, Ex. A, ¶ 1.17.] Petitioners also expressly agreed that the Settlement could not be modified as a result of alleged newly discovered facts, events, or legal issues, and that "no representations, warranties or inducements have been made" concerning the Settlement, other than those contained in the stipulation (the "merger clause"). [R. 2-8, Ex. A, ¶ 10.7.]

In exchange for these releases and agreements, Coram paid the Petitioners $25 million in cash and issued to Petitioners 2,520,000 warrants convertible into Coram unrestricted stock. [R. 2-8, Ex. A, ¶¶ 2.1(a), 2.3.] Over the next several months and after protracted negotiations, the parties ultimately agreed to key terms related to the warrants, including a formula by which the exercise price of the warrants would be set.[2] The District Court then approved the settlement terms in an Order of the Court, which was signed on May 19, 1995. [R. 2-8, Ex. D.] That judgment became final pursuant to its own terms on June 19, 1995.

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[1] Petitioners inaccurately suggest in their Petition that Coram is "a stranger to the prior litigation." [Pet. for Writ of Cert. at 12.] In fact, Petitioners, through their knowledgeable and experienced counsel, painstakingly negotiated and ultimately entered into the Settlement *with Coram*, T[2]'s successor corporation, specifically bargaining for Coram stock.

[2] The exercise price was calculated at $22.125. (Warrant Agreement, 2.01 [R. 2-8, Ex. B.])

On November 21, 1995, Petitioners filed a Complaint against Coram and certain of its officers and directors, the Respondents herein, alleging violations of Sections 10(b) and 20(a) of the Securities Exchange Act, 15 U.S.C. §§ 78j(b), 78t(a), and Rule 10b-5, 17 C.F.R. § 240.10b-5, promulgated thereunder, as well as certain state law violations. [R. 1-1.] Petitioners alleged in their Complaint that "Coram common stock and, in turn, the Warrants were artificially inflated *at the time* plaintiffs agreed to settle the earlier litigation and *at the time* the settlement was submitted to the Court for approval." [R. 1-1, ¶ 3 (emphasis added).] Petitioners alleged that the Respondents issued false and misleading statements "from at least November 1994" and "for several fiscal quarters preceding the final determination of the exercise price of the warrants." [R. 1.1, ¶¶ 32, 97.] According to Petitioners, the alleged fraudulent conduct artificially inflated the value of Coram stock and the warrants that they had obtained pursuant to the Settlement. Petitioners did not allege direct reliance on any fraudulent statements made during settlement negotiations or elsewhere, but rather that they "rel[ied] upon the integrity of the market" in agreeing to accept warrants. [R. 1-1, ¶ 122.]

In their Petition, Petitioners mischaracterize the allegations contained in the Complaint, which was dismissed pursuant to Fed. R. Civ. P. 12(b)(6). In direct conflict with the Complaint's allegations, Petitioners now assert, without citation to the Complaint, that, "[i]t was during the Formula Period, the period between the effective date of the settlement and the June exercise pricing of the warrants, that the fraud occurred." [Pet. for Writ of Cert. at 2-3.] Petitioners cannot revise by argument years later their Complaint's allegations that the alleged fraud occurred "[d]uring the pendency of the settlement of the Earlier Class Action," in an attempt to avoid the effect of

the Settlement's merger clause. [R. 1-1, ¶ 63.] Given the procedural posture of this case, the allegations in the Complaint control.[3]

As reflected in the Complaint, Petitioners did not attempt to rescind the Settlement. Instead, they affirmed the Settlement agreement, kept the $25 million in cash that Coram had paid, and sued for the alleged loss in value of the warrants.

Respondents moved to dismiss Petitioners' Complaint for failure to state a claim pursuant to Fed. R. Civ. P. 12(b)(6). The grounds for Respondents' motion included the following: (1) Petitioners' claims are barred by specific terms of the Settlement, including the release and waiver provisions and the merger clause; (2) Petitioners cannot adequately plead the essential element of reliance under the fraud-on-the-market theory; (3) Petitioners' claims are barred by the doctrines of res judicata and collateral estoppel; (4) Petitioners have no standing to assert claims under Section 10(b) of the Securities Exchange Act of 1934, because they are not purchasers of securities, and (5) Petitioners have not suffered any cognizable damages, because they still hold the warrants.[4] [R. 2-8.] Significantly, Petitioners did not raise before the District Court the issue that they now contend is the controlling ques-

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[3] Even under their newly articulated contention that the alleged fraud occurred after the Settlement was finalized, Petitioners' Section 10(b) claim is still without merit. In *Basic Inc. v. Levinson*, 485 U.S. 224, 108 S.Ct. 978 (1988), this Court noted that in order to state a claim under the federal securities laws, a plaintiff must have relied on a misrepresentation of fact. If Petitioners had already signed the Settlement at issue before the alleged fraud occurred, then, as a matter of law, they cannot establish the essential reliance element of their claim.

[4] Thus, even if the Court were to grant certiorari and reverse the lower courts' decisions, this case would nonetheless likely be dismissed on remand.

tion: the effect of Section 29(a) of the Securities Exchange Act of 1934 on the Settlement's release and merger provisions.

On February 12, 1997, the District Court granted Respondents' motion to dismiss the Complaint, finding that Petitioners' action was barred by the merger clause contained in the Settlement. [Pet. for Writ of Cert., App. B.] The merger clause provides:

> [The] Side Letter Agreement, Stipulation and the Exhibits attached hereto constitute the entire agreement among the parties hereto and no representations, warranties or inducements have been made to any party concerning the Stipulation, the Exhibits or the Side Letter Agreement other than the representations, warranties and covenants contained and memorialized in such documents.

[R. 2-8, Ex. A, ¶ 9.7.] In holding that Petitioners were barred from prosecuting the suit, the District Court reasoned as follows:

> If a contract contains a merger or 'entire agreement' clause and the injured party seeks damages on the contract *rather than rescission*, then the clause will prevent recovery by estopping the claimant from asserting reliance on any misrepresentations (or omissions) allegedly made outside of the four corners of the contract.

[Pet. for Writ of Cert., App. B at 21a (citations omitted) (emphasis added).]

Petitioners filed their appeal in the Eleventh Circuit on March 13, 1997. [R. 3-25.] In their opening appellate brief, Petitioners again failed to argue the question they now present to this Court: whether Section 29(a) prevents enforcement of the Settlement's merger clause. Instead, Petitioners relied heavily on *Meason v. Gilbert*, 236 Ga. 862, 226 S.E.2d 49 (Ga. 1976), a Supreme

Court of Georgia case in which the plaintiff was permitted to rescind a contract and sue for fraud, despite the contract's merger clause.

On October 15, 1998, the Eleventh Circuit affirmed the District Court's dismissal of Petitioners' Complaint. In so affirming, the Court of Apeals recognized that, unlike Petitioners, the plaintiff in *Meason* sought to rescind the contract at issue. The court wrote:

> Here, the settlement agreement contained a merger clause specifically stating that the settlement and the attached exhibits constituted the entire agreement, and that no representations, warranties, or inducements were made to any party other than what was contained in the documents. The appellants did not attempt to rescind the settlement, but elected to sue for damages on the contract, rather than in tort. The merger clause governs, and the district court correctly found that the complaint failed to state a claim.

Hall v. Coram Healthcare Corp., 157 F.3d 1286, 1290 (11th Cir. 1998).

Petitioners then filed their Petition for Writ of Certiorari on March 16, 1999, essentially asking this Court to review a statutory provision that the District Court did not have the opportunity to examine and to address a line of reasoning that has been waived. Thus, if certiorari were granted, this Court would be the inaugural court to decide the issue now raised by Petitioners.

For these reasons, Respondents submit that Petitioners are disingenuously characterizing the question presented in their Petition as whether the Eleventh Circuit violated the express language of Section 29(a) in upholding the Settlement. Petitioners further misleadingly assert that the Eleventh Circuit "rejected the application of Section 29(a)." [Pet. for Writ of Cert. at 13.] In fact,

Petitioners chose not to assert their Section 29(a) argument either in the District Court or in their opening brief to the Court of Appeals.

Because Petitioners did not present their argument based on Section 29(a) to the District Court for review, the issue was not preserved for appeal and has been waived. *See Freytag v. Commissioner*, 501 U.S. 868, 894-95, 111 S. Ct. 2631, 2647 (1991) ("The very word 'review' presupposes that a litigant's arguments have been raised and considered in the tribunal of first instance. To abandon that principle is to encourage the practice of 'sandbagging' . . . .") (Scalia, J. concurring in part and concurring in the judgment). *See also Blue Cross & Blue Shield v. Sanders*, 138 F.3d 1347, 1357 (11th Cir. 1998) (finding that argument that had not been raised at district court level was waived); *Federal Deposit Ins. Corp. v. Verex Assurance, Inc.*, 3 F.3d 391, 395 (11th Cir. 1993).

In fact, Petitioners did not argue that Section 29(a) operates to shield them from the Settlement's merger clause until their reply brief to the Eleventh Circuit.[5] Because they did not raise the argument in their opening brief, the argument was waived for purposes of review. *See Coker v. Trans World Airlines, Inc.*, 165 F.3d 579, 585 (7th Cir. 1999), *Norwest Bank, N.A. v. Doth*, 159 F.3d 328, 334 (8th Cir. 1998) (stating that issues first raised in reply briefs ordinarily will not be considered); *Thomas R.W. v. Massachusetts Dept. of Educ.*, 130 F.3d 477, 480 (1st Cir. 1997) ("[B]ecause an appellee is entitled to rely on the content of appellant's brief for the scope of the issues appealed, an[] appellant generally may not pre-

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[5] In their initial brief to the Eleventh Circuit, Petitioners referred to Section 29(a) only once, in a "*see also*" cite in a footnote, but, as in the District Court, Petitioners did not suggest that this provision should serve as a basis for invalidating the Settlement's merger clause.

serve a claim merely by referring to it in a reply brief or at oral argument.") (citation and internal quotation marks omitted).

Neither the District Court nor the Eleventh Circuit was given the opportunity to address Section 29(a) in the context of this case. Rather, the issue presented to both courts was the enforceability of a carefully crafted settlement agreement negotiated by parties having equal bargaining power. Accordingly, Petitioners have waived their Section 29(a) argument.

REASONS FOR DENYING THE WRIT

Petitioners contend that certiorari should be granted pursuant to Supreme Court Rule 10, because the Eleventh Circuit's opinion in this case and the First Circuit's opinion in *Rogen v. Ilikon,* 361 F.2d 260 (1st Cir. 1966), create a split within the circuit courts regarding the applicability of Section 29(a) of the Securities Exchange Act of 1934 to agreements settling federal securities claims. [Pet. for Writ of Cert. at ii.] This contention is incorrect, because the Eleventh Circuit's opinion involves questions that are factually and legally distinct from those at issue in *Rogen.* Accordingly, because the two cases do not conflict, there is no controversy between or among the circuit courts that demands Supreme Court intervention pursuant to Rule 10. Indeed, recent decisions demonstrate that courts are generally in agreeemnt, among themselves and with Supreme Court precedent, regarding the effect to give a merger clause and similar settlement provisions in subsequent litigation.

A. Because No Split In The Circuits Exists, The Court Has No Grounds On Which To Base A Grant Of The Petition For Writ Of Certiorari

The Eleventh Circuit's decision, upholding a negotiated settlement agreement that disposes of federal securities

claims and that precludes Petitioners from overriding the contract's express language, does not conflict with the First Circuit's opinion in *Rogen v. Ilikon*. The very fact that the *Rogen* case is 33 years old makes dubious any argument that there is some "split of authority" on an important issue that has been percolating through the lower courts in recent years, resulting in contradictory decisions, and requiring resolution by this Court. Furthermore, *Rogen* is both legally and factually distinguishable.

Specifically, the First Circuit in *Rogen* did not hold that enforcing a federal securities settlement agreement on behalf of a competently represented nationwide class violates Section 29(a), as Petitioners contend the Eleventh Circuit should have held in this case. The *Rogen* decision is, therefore, not in direct conflict with the Eleventh Circuit's decision.

The issue decided by the First Circuit was entirely different from that decided by the Eleventh Circuit. The First Circuit held that a genuine issue of material fact existed as to whether the plaintiff would have found certain omitted facts material and whether the plaintiff relied on the alleged non-disclosures to his detriment. *Rogen*, 361 F.2d at 26-67. In contrast, the Eleventh Circuit ruled that Petitioners could not avoid the terms of a comprehensive settlement, which resulted from painstaking negotiations designed to terminate the ongoing, protracted litigation once and for all.

Indeed, the First Circuit only mentions Section 29(a) in a passing "comment." *See id* at 268. In that comment, the court dismissively states that the non-reliance provision of the contract did not alter its analysis that, considering the evidence in the light most favorable to the plaintiff, a trier of fact could find in his favor. *Id.* at 268. In its remarks regarding the non-reliance provision of the contract, the court acknowledged that it was "not aware

of other judicial treatment of such a provision." *Id.* Given that the case was decided more than 30 years ago, this admission is not surprising. In sum, the First Circuit did not base its holding on an analysis of Section 29(a), and it never addressed whether a merger clause in a settlement agreement that resolves class-wide claims is enforceable where the class members never attempted to rescind the contract.

In addition, *Rogen* involved facts significantly different from those here. First, in *Rogen*, there was no merger clause in the relevant agreement. The District Court and Eleventh Circuit, in contrast, premised their decisions on the Settlement's merger clause. *Rogen* is accordingly not an appropriate counterpart to this case. Second, unlike Petitioners, the plaintiff in *Rogen* did seek rescission of the relevant contract. *See Rogen,* 361 F.2d at 265. Indeed, the compelling facts in *Rogen* show that the defendants had put the plaintiff in an impossible position by rejecting the plaintiff's request for recission and simultaneously arguing that he was bound by the contract's terms. *Id.* at 268. Conversely, Petitioners never sought to rescind the Settlement and tender back the $25 million that they received. Petitioners, therefore, voluntarily elected their remedy to affirm and to sue under the Settlement contract.

Furthermore, the *Rogen* court noted that the plaintiff did not appear to be a sophisticated seller or "experienced business man," but instead seemed "exceedingly gullible" or "overtrusting" and, viewing the evidence most favorably to the plaintiff, might have been "negligent—perhaps grossly so." *Rogen*, 361 F.2d at 267 (citations and internal quotation marks omitted). In this case, Petitioners were represented in the settlement negotiations by more than 60 law firms experienced in federal securities class action litigation.

Finally, the plaintiff in *Rogen* alleged that he relied on the defendants' representations and omissions made *during the negotiation of the contract.* Conversely, the representatives of the nationwide class, represented by numerous law firms, were not unsophisticated or overly trusting in the least and have never alleged that the negotiations were in any way tainted by fraud. To the contrary, unlike in *Rogen,* the settlement agreement at issue here is the product of extensive discovery and protracted bargaining among equals.[6] For these numerous reasons, the Eleventh Circuit's decision in no way conflicts with the First Circuit's 1966 opinion in *Rogen.*

The issues presented here are neither controversial nor have they figured prominently in recent jurisprudential discourse. Indeed, this case does not satisfy the Court's "high degree of selectivity" standard,[7] because no conflict between or among the circuits exists. For these reasons, Respondents respectfully request that the Court deny Petitioners' Petition for Writ of Certiorari.

B. The Eleventh Circuit's Decision In This Case Is Consistent With Recent Law In Other Circuits And Supreme Court Precedent

The Eleventh Circuit's holding neither conflicts with more recent cases examining comparable issues nor conflicts with any prior Supreme Court decision. In fact, the Eleventh Circuit obtained substantial guidance from the

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[6] Rather than impugn the integrity of the settlement process, Petitioners attempt to prove the essential reliance element in their Section 10(b) claim through the fraud-on-the-market theory. But, where one relies on something other than the integrity of the market to purchase stock, such as in direct transactions with the seller, the fraud-on-the-market theory does not apply. *Basic Inc.*, 485 U.S. at 244.

[7] *Hubbard v. United States*, 514 U.S. 695, 720, 115 S. Ct. 1754, 1767 (1995) (Rehnquist, C.J., dissenting).

Court's recent decision in *Matsushita Elec. Indus. Co., Ltd. v. Epstein,* 516 U.S. 367, 116 S. Ct. 873 (1996). In addition, recent case law shows general circuit harmony with regard to the effect that a merger clause, such as the one relevant here, has on subsequent litigation brought by a sophisticated and ably represented party that voluntarily waived its rights to sue and voluntarily disavowed reliance on anything not contained within the relevant written agreement.

For example, the Eleventh Circuit decision is consistent with the Second Circuit decision in *Harsco Corp. v. Segui*, 91 F.3d 337 (2d Cir. 1996), where the court dismissed securities fraud claims brought in connection with a stock purchase agreement that contained a merger clause. The Second Circuit rejected the argument that the merger clause constituted an impermissible waiver of securities fraud claims in violation of Section 29(a) and affirmed the dismissal of the plaintiff's claims for failure to plead justifiable reliance. The court held that, although the contract provisions "weaken" the purchaser's ability to recover under Rule 10b-5, "such a 'weakening' does not constitute a forbidden waiver of compliance [with the securities laws.]" *Harsco,* 91 F.3d at 343.

In reaching its decision, the court noted that there was no "disparity in bargaining power" between the parties, and that the purchaser had taken precautions to determine independently the value of the stock it was purchasing. *Id.* at 344. The Second Circuit also noted that the parties had negotiated to include certain representations in the agreement, any of which, if fraudulent, could provide the basis for a securities fraud action. "Thus, it is not fair to characterize [the 'no representations' clause and the merger clause] as having prevented [the purchaser] from protecting its substantive rights. [The purchaser] rigorously defined those rights in [the agreement.]" *Id.*

Similarly, in *Petro-Ventures, Inc. v. Takessian*, 967 F.2d 1337 (9th Cir. 1992), the Ninth Circuit upheld the merger clause contained in a settlement agreement pursuant to which the plaintiffs had obtained a cash payment and the transfer of certain securities. *Id.* at 1338. The court dismissed the plaintiff's subsequent securities fraud claim based on the comprehensive release entered into as part of the settlement. *Id.* at 1339. On appeal, the plaintiff argued that enforcing the release as to the federal securities claim would violate Section 29(a). The Ninth Circuit held that the release could be enforced to bar the securities claim and explained, "[w]hen, as here, a release is signed in a commercial context by parties in a roughly equivalent bargaining position and with ready access to counsel, the general rule is that if 'the language of the release is clear, . . . the intent of the parties is indicated by the language employed'." *Id.* at 1342 (quoting *Locafrance U.S. Corp. v. Intermodal Sys. Leasing, Inc.*, 558 F.2d 1113, 1115 (2d Cir. 1977) (upholding release in a settlement agreement arising out of a lawsuit where violations of federal securities laws were alleged, on the grounds that the parties had equal bargaining positions as well as access to counsel)) (internal quotation marks omitted).

Significantly, in *Takessian*, the Ninth Circuit also held that, because of the "adversarial setting that is characteristic of litigation," the typical disparity of bargaining power and access to information did not exist. *Takessian*, 967 F.2d at 1341. The court concluded that "allowing the assertion of a federal securities claim in the face of such a complete settlement agreement would discourage settlement negotiations in all litigation in which a federal securities claim may eventually be discovered." *Id.* at 1339 (citation omitted).

Here, the Eleventh Circuit's decision is entirely consistent with the decisions of the Second and Ninth Circuits

and does not conflict with any other circuit court holding. Accordingly, the Petition in this case does not present a conflict or any other rationale justifying certiorari.

C. Petitioners' Reasoning Is Inconsistent With The Policy And Practice Of Allowing Parties To Settle Federal Securities Claims

Petitioners argue that *Rogen* stands for the proposition that settlement provisions purporting to give liability waivers and other assurances to negotiating parties violate Section 29(a). The logic of this argument suggests that Section 29(a) effectively prevents parties from achieving finality in settlements of federal securities claims, where a release of securities law claims is a necessary part of their agreement. The logic of Petitioners' argument is not supported by case law, which shows that settlements and releases of federal securities claims are commonplace and enforceable without regard to Section 29(a). *See, e.g., Nottingham Partners v. Trans-Lux Corp.*, 925 F.2d 29, 33 (1st Cir. 1991); *Petro-Ventures, Inc.*, 967 F.2d at 1342; *Locafrance*, 558 F.2d at 1115.

Indeed, this Court's decision in *Matsushita Elec. Indus. Co. Ltd. v. Epstein*, 516 U.S. 367, 375, 116 S. Ct. 873, 878 (1996), recognizes that, for settlement purposes, a federal securities claim is fundamentally like any other.[8]

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[8] In a related vein, this Court's opinion in *Shearson/American Express, Inc. v. McMahon*, 482 U.S. 220, 107 S. Ct. 2332 (1987), also demonstrates that federal securities claims are not unique. In *McMahon*, the Court rejected the argument, similar to the argument advanced by Petitioners, that Section 29(a) prevented the enforcement of a predispute arbitration agreement. *McMahon*, 482 U.S. at 228. In reaching its decision, the Court reasoned that because Section 27 of the Exchange Act did not "impose any duty with which persons trading in securities must 'comply,'" Section 29(a) did not prevent the jurisdictional waiver in the arbitration agreement. *Id.* Given the Court's holding, Petitioners' citation to *McMahon* is misleading. [*See* Pet. for Writ of Cert. at 6.] Although

In giving effect to the entry of a comprehensive class action settlement in a related state court litigation, this Court held that the respondents, who were members of the state court class action, were barred from prosecuting their federal securities claims. *Matsushita Elec. Indus. Co.*, 516 U.S. at 385-86. Thus, as a practical matter, the respondents were deemed to have released their federal securities claims through settlement.

This result is not surprising because, on the whole, "[p]ublic policy strongly favors the pretrial settlement of class action lawsuits." *Wald v. Wolfson (In re U.S. Oil & Gas Litig.)*, 967 F.2d 489, 493 (11th Cir. 1992) (citing *Cotton v. Hinton*, 559 F.2d 1326, 1331 (5th Cir. 1977)). Settlements of complex class action cases are favored, not only because they help conserve judicial resources, but they also allow parties to "establish[] a general peace." *See Takessian*, 967 F.2d at 1342 (citation omitted). In this case, Respond ts bargained for finality. For this "peace," they agreed to pay Petitioners a handsome sum, and Petitioners voluntarily accepted the bargain, knowing its terms.

Petitioners have presented the Court with no grounds for granting their Petition, but instead they ask the Court to review a settled issue and render a decision that undermines sound public policy. Specifically, if Petitioners are able to override the explicit terms for which they bargained, incentives to end disputes through settlement will weaken. Under the precedent that Petitioners request, every comprehensive settlement agreement intended to resolve litigation fully and finally would be vulnerable to attack when one party determines, after the fact, that certain terms are no longer to its liking. Accordingly, the current state of the law should be preserved. As the Eleventh Circuit

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cited favorably, *McMahon* rejects, rather than supports, Petitioners' Section 29(a) argument.

has explained: "Defendants buy little peace through settlement unless they are assured that they will be protected" against future liability. *In re U.S. Oil & Gas Litig.*, 967 F.2d at 493-94.

CONCLUSION

Wherefore, for all the foregoing reasons, Respondents pray that this Court deny this Petition for Writ of Certiorari, because there is no split of authority between or among the circuits on the issue of Section 29(a)'s effect on settlements of federal securities claims or on the issue addressed by the Eleventh Circuit Court of Appeals below.

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